

**From:** Dane Hutchings  
**To:** "Sara Lamnin"; Rich Constantine  
**Cc:** Carly Shelby  
**Subject:** FW: Governance, Transparency & Labor Relations April Policy Committee Agenda  
**Date:** Thursday, April 5, 2018 6:49:52 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
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[image005.png](#)  
[GTLR Final Agenda Packet.pdf](#)

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Hello Sara and Rich:

Can we schedule some time to chat either tomorrow or early next week to review the run of show for the policy committee? As you'll see we have 11 action items for consideration. Additionally (Rich), this being your first time as "acting" chair, it may be a good idea to do a walkthrough of what to expect.

Copying Carly to help arrange a call number and time for a call.

Looking forward to connecting.

DH

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**From:** Meg Desmond  
**Sent:** Thursday, April 05, 2018 4:11 PM  
**Cc:** Dane Hutchings <dhutchings@cacities.org>  
**Subject:** Governance, Transparency & Labor Relations April Policy Committee Agenda

Dear GTLR Policy Committee Members:

Attached is the agenda for next week's policy committee meeting being held at the Sheraton Fairplex Hotel and Conference Center on April 12.

If you are flying into Ontario, there is a complimentary shuttle from the airport to the hotel. Please call the hotel directly at 909-622-2220 to make your arrangements.

**Please note the following:**

- All members ***must*** check in at the registration desk to receive their badge.
- General Briefing begins at 10:00, policy committees convene immediately after the briefing.
- RSVP by clicking [here](#).
- Agendas will be emailed out approximately one week prior to the meeting

We look forward to seeing you in Pomona.

**Meg Desmond**  
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*Strengthening California Cities  
Through Advocacy & Education*



## GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

Thursday, April 12, 2018

10:00 a.m. – 3:00 p.m.

Sheraton Fairplex Hotel & Conference Center, 601 West McKinley Avenue, Pomona

Individuals who wish to review the full text of bills included in this packet are encouraged to do so by visiting the League's website at [www.cacities.org](http://www.cacities.org) and clicking on "Bill Search" found at the left column. Be sure to review the most recent version of the bill.

### A G E N D A

#### **SPECIAL ORDER: State Budget and Issues Briefing for all policy committee members**

**10:00 – 10:45 a.m., Room California 2**

*Upon adjournment, individual policy committee meetings will begin*

#### **I. Welcome and Introductions**

#### **II. Public Comment**

#### **III. GTLR Work Plan and Strategic Goal Update**

*Informational*

#### **IV. 2018 Legislative Agenda (Attachment A)**

*Action*

- [AB 1750](#) (McCarty) Elected officials: sexual harassment settlement agreements: liability.
- [AB 1867](#) (Reyes) Employment discrimination: sexual harassment: records.
- [AB 1870](#) (Reyes) Employment discrimination: unlawful employment practices.
- [AB 2366](#) (Bonta) Employment: victims of sexual harassment: protections.
- [AB 3081](#) (Gonzalez-Fletcher) Employment: sexual harassment.
- [SB 820](#) (Leyva) Settlement agreements: confidentiality.
- [SB 1038](#) (Leyva) California Fair Employment and Housing Act: violations: personal liability.
- [SB 1300](#) (Jackson) Unlawful employment practices: discrimination and harassment.
- [SB 1343](#) (Mitchell) Employers: sexual harassment training: requirements
- [AB 2069](#) (Bonta) Medicinal cannabis: employment discrimination.
- [AB 2571](#) (Gonzalez Fletcher) Public employee retirement systems: investments: race and gender pay equity.

#### **V. Legislative Items of Interest (Handout)**

*Informational*

**Next Meeting: Thursday, June 7, Sacramento Convention Center, Sacramento**

*Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:*

*Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or*

*A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.*

*A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.*

*NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state's Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials' statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). The League has been persistent, but unsuccessful, in attempting to change the FPPC's mind about this interpretation. As such, we feel we need to let you know about the issue so you can determine your course of action.*

*If you would prefer not to have to report the value of the lunches as income, we will let you know the amount so you may reimburse the League. The lunches tend to run in the \$30 to \$45 range. To review a copy of the FPPC's most recent letter on this issue, please go to [www.cacities.org/FPPCletter](http://www.cacities.org/FPPCletter) on the League's Website.*

**GOVERNANCE, TRANSPARENCY AND LABOR RELATIONS POLICY COMMITTEE**  
**Legislative Update**  
**APRIL 2018**

**Staff:** Dane Hutchings, Legislative Representative (916) 658-8210

**Preface: Legislative Trends Regarding Sexual Harassment Prevention and Response**

The purpose of this summary is to provide context around the influx of sexual harassment prevention and response measures which will be discussed and ultimately acted upon by the committee. Additionally, in a further effort to provide the committee with the most information possible, League staff conducted a survey of City Managers, Human Resource Directors and City Attorneys to provide a local perspective by the city staff who are most involved with day-to-day employer/employee management. Comments provided by these officials (if applicable) will be noted as “survey comments”.

The political climate throughout California has been strongly affected by recent revelations of long standing and widespread prevalence of sexual harassment and assault in specific professional industries. The most highly publicized allegations have been most prevalent within California’s entertainment and political industries, sparking a social media movement more commonly known as the “#MeToo” and “#TimesUp” movement.

In Sacramento, more than 300 women ranging from low ranking Capitol staffers to high ranking government officials and influential lobbyists [signed an open](#) letter calling upon the State legislature to act. As more alleged victims and subsequent allegations have been made public, The California State Legislature has also felt the impacts.

Currently, seven California lawmakers have come under fire with allegations ranging from sexual harassment to assault. As a direct result, three state lawmakers have resigned and one has taken an unpaid leave while allegations of conduct are being investigated.

With raised awareness comes a flurry of legislation that attempts to address and solve what proponents have claimed are the cultural norms of “Sacramento politics” that perpetuate the cycle of workplace harassment statewide.

Thus far the Legislature adopted Assembly Bill [\(AB\) 403 \(Melendez\)](#), a whistleblower protection bill for state legislative staff that has previously failed four times in the Senate Appropriations committee until this year. The Legislature has also hired an outside law firm to conduct independent investigations as claims arise.

Additionally, the Assembly Rules Committee has formed the [Harassment, Discrimination, Retaliation Prevention & Response Committee](#) chaired by Assembly

Member Laura Friedman (D, Burbank). League staff has been informed that this committee is likely to review all legislation pertaining to this issue and work to create a uniformed legislative package designed to ensure that measures are not duplicative and provide enhanced protections for victims, their families as well as strong deterrents to incentivize a holistic cultural change.

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**1. AB 1750 (McCarty) Elected Officials: Sexual Harassment Settlement Agreements: Liability ([Full Bill Text Here](#))**

**Bill Summary:**

This bill would require an elected official to reimburse a public entity that pays any compromise or settlement of a claim or action involving conduct that constitutes sexual harassment, if an investigation reveals evidence supporting the claim of sexual harassment against the elected official.

**Bill Description:**

This bill has not yet been set for a committee hearing and is still mostly intent language. This bill is sponsored by Assembly members McCarty, Baker, Cristina Garcia, Gloria, Gonzalez Fletcher, Kalra, Limon, Quirk-Silva, Reyes & Waldron.

**Background:**

Under current law, the employer pays for the settlement of a claim. According to the author, nearly two million dollars has been paid out by California taxpayers to settle sexual harassment claims against legislators over the past 25 years. In the case of local city officials, it is the city and therefore the taxpayers who would pay for the settlement claim if evidence were found that supports the claim of sexual assault.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

The League currently does not have explicit existing policy relating to this topic. The only policy relating to this topic is:

- *Public trust and confidence in government is essential to the vitality of a democratic system and is the reason ethics laws hold public officials to high standards.*
- *The League supports legislation that limits the exposure of local governments to lawsuits related to liability.*

**Comments:**

Staff Comments: The author's fact sheet references the fact that this bill would seek reimbursement for any sexual harassment settlements paid by the legislature when

there is clear evidence of wrongdoing by a legislator. Until there is clarifying language, we should work under the assumption that this bill would apply to all elected officials.

This measure could potentially save a city money due to the shifted burden to pay for settlement agreements from the city to the elected city official; however, it could potentially open cities up to more lawsuits from elected officials who now must pay the settlements.

**Support-Opposition: (As of 04/03/2018)**

Support:

None on File

Opposition:

None on File

**Staff Recommendation:**

League staff recommends the Committee discuss AB 1750 to determine a position.

**Committee Recommendation:**

**Board Action:**

**2. AB 1867 (Reyes) Employment Discrimination: Sexual Harassment: Records.**  
**([Full Bill Text Here](#))**

**Bill Summary:**

This bill would require that employee complaints regarding sexual harassment filed through the internal complaint process of the employer shall be maintained by an employer with 50 or more employees for 10 years after the filing date.

**Bill Description:**

This bill would add Section 12950.5 to the Government Code to add statute declaring that a public or private employer with over 50 employees is obligated to maintain records of sexual harassment complaints and investigations for ten years. If an employer does not comply, the Department of Fair Employment and Housing may seek an order requiring the employer to comply.

**Background:**

Currently, the California Fair Employment and Housing Act prohibits an employer from failing to take corrective action to remedy harassment in the workplace if the employer knows or should have known of the harassment. The act also prohibits an employer from failing to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

California currently does not have statute regarding an employer's responsibility to maintain these types of records. Federal law and California law currently does impose other types of recoding keeping rules and regulations but is silent in explicitly addressing sexual harassment complaints.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

The League currently does not have explicit existing policy relating to this topic.

The only policy relating to this topic is:

*The League opposes state-mandated legislation related to employer/employee relations that are not mutually agreed upon by the local public agency and its employee organizations, except as provided by local law.*

**Comments:**

Staff Comments: The League has a history of opposing measures that require additional, non-reimbursable duties. However, given the sensitive nature of this measure – staff feels it is necessary to seek direction from the Policy Committee.

**Support-Opposition: (as of 04/03/2018)**

Support:

None on File

Opposition:

None on File

**Staff Recommendation:**

League staff recommends the Committee discuss AB 1867 to determine a position.

**Committee Recommendation:**

**Board Action:**

**3. AB 1870 (Reyes) Employment discrimination: unlawful employment practices.**  
**[\(Full Bill Text Here\)](#)**

**Bill Summary:**

This bill would extend the period from one to three years for which complaints alleging unlawful employment or housing practices may be filed with the California Fair Employment and Housing Act (FEHA).

**Bill Description:**

AB 1870 would amend Sections 12960 and 12980 of the Government Code, relating to employment to extend the statute of limitation from one year to three years for both public and private employees to come forward with an administrative claim under FEHA.

The author states that this bill would better protect employees who when harassed may not immediately feel comfortable coming forward with formal accusations.

**Background:**

Currently, a person can file a complaint with the Department of Fair Employment and Housing within one year from the date upon which the unlawful practice occurred. An administrative claim under FEHA includes any claim or violation of the following:

- Race, color
- Ancestry, national origin
- Religion, creed
- Age (over 40)
- Disability, mental and physical
- Sex, gender (including pregnancy, childbirth, breastfeeding or related medical conditions)
- Sexual orientation
- Gender identity, gender expression
- Medical condition
- Genetic information
- Marital status
- Military and veteran status

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

There is no existing League policy in this area.

**Comments:**

Staff Comments: This bill would extend the liability that a city will take on from current and potentially past employees.

**Support-Opposition: (as of 04/03/2018)**Support:

California Employment Lawyers Association (Co- Sponsor)  
Consumer Attorneys of California (Co- Sponsor)  
Equal Rights Advocates (Co- Sponsor)

Opposition:

None on file



**Staff Recommendation**

League staff recommends the Committee discuss AB 1870 to determine a position.

**Committee Recommendation:****Board Action:****4. AB 2366 (Bonta) Employment: victims of sexual harassment: protections. ([Full Bill Text Here](#))****Bill Summary:**

This bill would establish protected leave time under the Family Medical Leave Act (FMLA) for employees who have been sexually harassed as well as provide protected leave time for employees whose immediate family members have been sexually harassed.

**Bill Description:**

This bill would expand existing law to include sexual harassment to the list of reasons for which existing employees can take leave time. Current law allows employees who have been a victim of domestic violence, sexual assault, and stalking to take protected. This bill would allow an immediate family member of an employee who has been a victim of sexual harassment, domestic violence, sexual assault, and stalking to take protected leave.

**Background:**

The author's office states that this leave time for immediate family member of victims would be used to assist the victims when they are seeking relief or obtaining services and counseling.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

There is no existing League policy in this area.

**Comments:****Staff Comments:**

In order to inform the GTLR Policy Committee – League staff conducted a brief survey with Human Resource Directors, City Managers, and City Attorneys for additional feedback. Here are the results of that survey:

**Comments in Opposition:**

The California Chamber of Commerce states that this bill would significantly expand leave laws provided to victims of sexual harassment without mandating the same employer safeguards that are required for other similar types of leave. They state that

sexual harassment is different from sexual assault, stalking and domestic violence because the harassment occurs in the workplace, the employer is liable, and the police are not normally involved to verify the unlawful act. They also say that sexual harassment is broadly defined and not all sexual harassment is actionable.

Cal Chamber believes that this bill does not distinguish between actionable harassment versus inappropriate behavior. Thus, leaving it up to the employee to decide what constitutes sexual harassment.

They also state that this bill does not include the same notice requirement for sexual harassment victims. They say that the certification that is needed to take leave for domestic violence, sexual assault, and stalking are not required for sexual harassment. For example, a police report, a court order or documentation from a medical professional is needed for an employee to take leave under Labor Code Section 230.

They draw a distinction between sexual harassment and sexual assault in that, "...an employer cannot ensure confidentiality if they are needing to interview and notify their own employees about what is going on (which is required of an employer investigating a sexual harassment claim)"

Cal Chamber states, "AB 2366 does not address this issue and leaves the employer in the position of having to choose between violating FEHA's investigation requirements or violating the proposed sexual harassment protected leave." They say that allowing the victim to go on leave will not allow employers to conduct a timely investigation.

Extending the leave to family: Opponents argue that this would be unduly burdensome on employers and that the definition of immediate family members is too broad. They believe that family members can currently take another form of need to assist their family member.

Employer liability: Cal Chamber states, "If sexual harassment protection is added to the Labor Code, employers are not only exposed to FEHA remedies, but also now lawsuits under the Private Attorneys General Act (PAGA).... PAGA allows an individual to pursue a "representative action" on behalf of similarly aggrieved employees without being subject to the strict filing requirements of a class action. If there are multiple Labor Code violations, penalties are stacked and very quickly add up. In addition, if the employee recovers any dollar amount, the employee is entitled to attorney's fees, which adds another layer of cost onto the employer."

### **Support-Opposition: (As of 04/03/2018)**

#### Support:

None on File

#### Opposition:

California Chamber of Commerce

**Staff Recommendation:**

League staff recommends the Committee discuss AB 2366 to determine a position.

**Committee Recommendation:****Board Action:****5. AB 3081 (Gonzalez-Fletcher) Employment: sexual harassment. ([Full Bill Text Here](#))****Bill Summary:**

This bill would do several things:

- It would prohibit an employer from discriminating or retaliating against an employee because of the employee's status as a victim of sexual harassment.
- The bill would establish a rebuttable presumption of unlawful retaliation if an employer takes specific actions within 90 days following the date an employee files a sexual harassment claim.
- The bill would authorize an employee to file a complaint with the Division of Labor Standards Enforcement for a violation of that prohibition within three years from the date of occurrence of the violation.

**Bill Description:**

This bill amends Sections 230 and 2810.3 and adds Chapter 4.7 (commencing with Section 1080) to Part 3 of Division 2 of the Labor Code, relating to employment.

**Background:**

(See cover page regarding sexual harassment legislation)

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

There is no existing League policy in this area.

**Comments:****Staff Comments:**

The League has a history of opposing measures that require additional, non-reimbursable duties. However, given the sensitive nature of this measure – staff feels it is necessary to seek direction from the Policy Committee. This bill expressly states that there will be no state reimbursement for this mandate.

Assuming that an employer has unlawfully retaliated against an employee if an employer takes specific actions within 90 days following the date an employee files a sexual harassment claim will limit employers from addressing legitimate concerns.

Having the employer take on the assumption of guilt will waste valued resources proving that their action is legitimate and not in retaliation to the employee's filing.

**Support-Opposition: (As of 04/03/2018)**

Support:

None on File

Opposition:

None on File

**Staff Recommendation:**

League staff recommends the Committee discuss AB 3081 to determine a position.

**Committee Recommendation:**

**Board Action:**

**6. SB 820 (Leyva) Settlement Agreements: Confidentiality. ([Full Bill Text Here](#))**

**Bill Summary:**

SB 820, also known as the STAND (Stand Together Against Non-Disclosures) Act, would ban nondisclosure provisions in settlement agreements in cases of sexual harassment, sexual assault and sex discrimination as a condition of settlement. The bill would permit the claimant to request confidentiality if she/he chooses.

**Bill Description:**

SB 820 adds Section 1001 to the Code of Civil Procedure which would prohibit settlements in sexual harassment, assault and discrimination cases at the claimant's option. The intent of the author is to take the power away from abusers and ensure that it is in the hands of the abused. The author states that, "Shining a bright light on this wrongdoing, the STAND Act will have a deterrent effect and prevent future instances of harassment, assault and discrimination."

**Background:**

The author characterizes the background as this: For decades, the behavior of individuals was kept secret in part due to the legal instruments that allowed them to hide behind confidentiality through secret settlements or lifelong nondisclosure agreements (NDAs). The use of NDAs or secret settlements in these cases allows repeat offenders to continue to harass while silencing victims.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

**Existing League Policy:**

The League Policy is unclear in regards to this issue. However, we do have policy on transparency and privacy issues.

- *The League supports maintaining the confidentiality of personnel matters and protecting public safety personnel discipline records from public disclosure.*
- *Public trust and confidence in government is essential to the vitality of a democratic system and is the reason ethics laws hold public officials to high standards.*
- *Transparency laws impose the minimum standards of conduct; to preserve public trust, public officials should aspire to conduct that exceeds minimum standards.*

**Comments:**Staff Comments:

By potentially eliminating confidentiality, SB 820 may expose employers to a public presumption of guilt even though the decision to settle was not based upon merit at all. To avoid this public image of guilt, SB 820 may drive employers to fight these cases in court instead of an early resolution. This may result in an increased cost to the employer.

Survey Comments:

- *"While this city has entered into agreements with confidentiality clauses for harassment or other FEHA-related complaints, as a public agency, we are required to disclose certain aspects of settlements made (e.g. Council authorization for settlement and payments made) by law. Additionally, if suit is filed in court, the allegations also become publicly accessible by the media, for example. I believe the nature of public agency transparency makes barring NDAs relatively insignificant. And as, I believe, most public agencies have no tolerance policies related to these type of incidents, there would be little impact to our ability to handle them, since we have an obligation to treat them seriously and do so".*
- *"Barring NDA's would hinder a city's ability to negotiate and dispense with a harassing lawsuit and encourage/force a city to litigate the lawsuit to trial. It is not uncommon for a city to be sued because it has the "deep pockets" in these types of lawsuits with loose allegations that the city knew or should have known about the alleged misconduct of the employee/harasser. This causes the city to have to spend money in legal fees to defend. One option is always settlement to "stop the bleeding" of money in defending against these types of lawsuits. As it common in these types of settlement agreements, both parties specifically agree that the signatory parties admit no liability and are entering into a settlement agreement solely for the purpose of disposing of the pending lawsuit. Sometimes the settlement amount may appear to be high to someone not involved in the lawsuit because they fail to understand that the cost to continue to defend the lawsuit would be much higher. Any person not sophisticated in how settlements are negotiated will automatically assume that the defendant city is only settling because it has liability and, therefore, did the acts as alleged in the plaintiff's lawsuit. As a result, a city will have to evaluate the publicity blow back that may*

*result, if settled, without a NDA and this alone may cause a city to litigate the matter to trial, which may cost substantially more in taxpayer money”.*

**Comments in Support:**

See author’s comments in the background and bill description.

**Comments in Opposition:**

The California Chamber of Commerce argues that this bill does not provide a victim with any greater protection than they have now and will only benefit trial attorneys by leveraging confidentiality provisions as a higher value item for negotiation so that the trial attorneys can increase the amount of the settlement. They state that victims already have this power to not agree to a confidentiality agreement because they already must be mutually agreed upon by both parties.

They believe that what this bill proposes is already existing law and there cannot be an effective confidentiality provision in a contract if one party, i.e. the employee/claimant, does not agree. They go further by saying that if this proposal were actually about protecting victims who feel they have less bargaining power than the employer, and are in an inferior position in negotiating, then the bill would only be applicable to those individuals who are not represented by counsel. However, SB 820 applies to all settlement agreements, even when the parties have equal power and equal, capable counsel representing them.

**Support-Opposition: (As of 04/03/2018)**

**Support:**

California Women’s Law Center (Co-Sponsor)  
Consumer Attorneys of California (Co-Sponsor)

**Opposition:**

The California Chamber of Commerce  
American Insurance Association  
California Ambulance Association  
California Employment Law Council  
California Retailers Association

**Staff Recommendation:**

League staff recommends the Committee discuss SB 820 to determine a position.

**Committee Recommendation:**

**Board Action**

## **7. SB 1038 (Leyva) California Fair Employment and Housing Act: Violations: Personal Liability. ([Full Bill Text Here](#))**

### **Bill Summary:**

This bill would hold individuals personally liable for retaliating against a person for filing a complaint under the Fair Employment and Housing Act.

### **Bill Description:**

This bill amends Section 12940 of the Government Code to hold an employee personally liable for retaliating against an employee who has filed a complaint, regardless of whether the employer knew or should have known of that employee's conduct.

According to the author's office, "Holding an individual personally liable also allows the employer, in some instances, to recover losses as a result of a civil action against one of their employees who retaliated against someone else." The author's office argues that this bill attempts to discourage individuals from retaliating against employees by holding them accountable for their actions.

### **Background:**

Under current law, individuals may not be held personally liable for retaliation due to the California Supreme Court case *Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158. Under this court decision, only the employer can be held accountable for retaliation. This bill now attempts to address this limitation and expands liability to the individual.

It is likely that the cost associated with the liability put on the individual will be pushed off to the local entity due to lawsuits filed by the employee being held personally liable. The public entity then ultimately becomes the liable party for acts that it did not know were occurring and no ability to stop such activities.

### **Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.

### **Existing League Policy:**

*The League supports legislation that limits the exposure of local governments to lawsuits related to liability.*

### **Comments:**

#### **Staff Comments:**

This bill is an attempt to change the law in response to a judicial decision that the legislature does not agree with. The author of this bill wants to be able to discourage employees from retaliating against those who file claims by holding them personally liable but the courts have ruled that only the *employer* can be held liable. This measure runs counter to a decision by the judicial branch and could result in increased litigation for the employer.

**Support-Opposition: (as of 04/03/2018)****Support:**

California Employment Lawyers Association (Co-Sponsor)

Equal Rights Advocates (Co-Sponsor)

**Opposition:**

None on file

**Staff Recommendation:**

League staff recommends the Committee discuss SB 1038 to determine a position.

**Committee Recommendation:****Board Action:****8. SB 1300 (Jackson) Unlawful Employment Practices: Discrimination and Harassment. ([Full Bill Text Here](#))****Bill Summary:**

This bill would do several things:

- It would amend FEHA to absolve a plaintiff who alleges that their employer did not take reasonable steps to prevent discrimination and harassment from proving that sexual harassment or discrimination occurred
- It would prohibit the release of claims under FEHA in exchange for a raise or a bonus or as a condition of employment.
- It would require employers to provide a two-hour sexual harassment prevention training within six months of hire and once every two years after that to all employees. This will now also include bystander intervention training.
- It would also prohibit an employer from requiring an employee to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace.

**Bill Description:**

SB 1300 would amend the Fair Employment and Housing Act (FEHA) by making several changes to Government Code Sections 12940 and 12950. It would also add Sections 12941.5 and 12964.5 to the Government Code.

**Background:**

The author's intent is to comprehensively address sexual harassment in the work place by getting rid of legal tactics used to encourage victims to not speak out, strengthen training, and holding employers accountable for the training.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure.



**Existing League Policy:**

There is no existing League policy in this area.

**Comments:**Staff Comments:

SB 1300 runs contrary to the US Constitution in that it removes the “standing” requirement. Per SB 1300, “A plaintiff in an action alleging an unlawful employment practice under this subdivision is not required to prove that the plaintiff endured sexual harassment or discrimination for purposes of showing that the defendant failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring”. By removing the standing requirement under Subdivision (k) of the measure, proof of an underlying claim is no longer required, thereby also creating a private right of action for failure to prevent sexual harassment and discrimination. Thus, an individual who believes an employer did not do enough to prevent discrimination could pursue a claim against the employer seeking: compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney’s fees all without suffering an actual injury.

The League has a history of opposing measures that require additional, non-reimbursable duties. However, given the sensitive nature of this measure – staff feels it is necessary to seek direction from the Policy Committee.

Survey Comments

See comments under SB 820 (Leyva) Re: use of non-disclosure agreements.

**Support-Opposition: (as of 04/03/2018)**Support:

California Employment Lawyers Association (co-sponsor)  
Equal Rights Advocates (co-sponsor)

Opposition:

The California Chamber of Commerce has placed this measure on their “Job Killers” list.

**Staff Recommendation:**

League staff recommends the Committee discuss SB 1300 to determine a position.

**Committee Recommendation:****Board Action:**

**9. SB 1343 (Mitchell) Employers: Sexual Harassment Training: Requirements**  
**(Full Bill Text Here)**

**Bill Summary:**

This bill would provide training and information on sexual harassment prevention, how to recognize harassment, and who to contact if they believe they are a sexual harassment victim. This bill expands the number of employers required to give this training to their employees changing the law to employers with 50 employees or more to employers with five or more employees.

**Bill Description:**

This bill would amend Sections 12950 and 12950.1 of the Government Code, relating to employment. This would require public and private employers with **five** or more employees to provide sexual harassment prevention training to all employees and which includes training on who to contact if they believe they are a sexual harassment victim.

The bill would require the Department of Fair Employment and Housing to develop a two-hour video training course on the prevention of sexual harassment in the workplace and to post it on the department's Internet Web site. The bill would also require the department to provide existing informational posters and information regarding sexual harassment prevention, available to employers, in alternate languages.

**Fiscal Impact:**

Unknown: A fiscal analysis has not yet been prepared on this measure. However, the measure requires the state Department to create the video and collateral material with no mandate requiring the local agency create any content. Apart from staff time taken to view the materials – this measure (as in print) appears to be cost neutral for cities.

**Existing League Policy:**

There is no existing League policy in this area.

**Comments:**

Staff Comments:

Having a video to show employees could be effective and save the employer costs. Having the materials in various languages will be more effective and will be a cost savings to the employer.

**Support-Opposition: (As of 04/03/2018)**

Support:

State Controller Betty T. Yee (sponsor)

Opposition:

None on file

**Staff Recommendation:**

League staff recommends the Committee discuss SB 1343 to determine a position.

## **Committee Recommendation:**

## **Board Action:**

### **10. AB 2069 (Bonta) Medicinal Cannabis: Employment Discrimination. ([Full Bill Text Here](#))**

#### **Bill Summary:**

This bill would prohibit employment discrimination against workers due to their status as qualified medical cannabis patients, or positive drug test for **medical cannabis use**. This bill amends Section 12940 of the Government Code to add status as, a qualified patient or person with an identification card for cannabis a protected class under FEHA.

#### **Background:**

Under current law, employers may not discriminate against workers based on their medical condition. Workers cannot be terminated or not hired on the basis of positive drug tests showing the use of prescribed controlled substances to treat their medical condition.

The Compassionate Use Act of 1996 authorizes seriously ill Californians to obtain and use marijuana for medical purposes when recommended by a physician.

The Adult Use of Marijuana Act, approved by California voters on November 8, 2016, further permits all adults 21 or over to use, possess, and obtain cannabis.

Even with the Compassionate Use Act and Proposition 64, patients continue to be denied employment or are terminated for testing positive for cannabis.

In 2008, the California Supreme Court ruled in *Ross v. Ragingwire Telecommunications* that an employee could be terminated solely based on their status as a medical cannabis patient. This bill is a response to that ruling and attempts to treat medical cannabis the same as a prescription opioid would be treated under employment law.

Currently, there are eleven other states that have enacted laws to protect medical cannabis patients' workplace rights and three more state courts ruled in favor of workers' rights.

#### **Fiscal Impact:**

This bill may place more liability on cities because it takes away the ability for cities to regulate medical marijuana use and therefore must allow employees to work under the influence of marijuana because there is no legally recognized test for impairment.

#### **Existing League Policy:**

*The League opposes state-mandated legislation related to employer/employee relations*

*that are not mutually agreed upon by the local public agency and its employee organizations, except as provided by local law.*

*The League regards as a vital interest the maintenance of local control over medical and adult use cannabis businesses, and supports measures that enhance and protect maximum local regulatory, land use, and enforcement authority in relation to such businesses.*

### **Comments:**

#### Comments in Support

According to the Author the intent of the measure is to give workers the same right to use medical marijuana as they have with other prescription drugs. AB 2069 has exemptions for employers that have safety-sensitive positions that are subject to federal drug testing regulations, or to employers who would face monetary or licensing-related penalties under federal regulations. AB 2069 allows employers to terminate or discipline employees who are visibly/physically impaired due to cannabis use on the workplace premises.

#### Comments in Opposition

The California Chamber of Commerce states, “(this bill) undermines employers’ ability to provide a safe and drug-free workplace by creating a new protected classification of employees who use marijuana for medical purposes, and exposes employers to costly and unnecessary litigation under the Fair Employment and Housing Act (FEHA).”

They go on to say that this bill opens up employers to liability under FEHA and undermines an employer’s ability to maintain safety in the workplace. Since there is no way to prove impairment with marijuana and having an employee with a cannabis card be a protected class there is a high probability of lawsuits and high costs if an employer tried to claim that an employee was under the influence of marijuana on the job when an accident occurred for example.

Putting even more liability onto the employer is the fact that marijuana is illegal under federal law and hiring a known marijuana user could have other legal ramifications.

Cal Chamber states that the Supreme Court and the voters decided to allow employers retain the ability to manage their own work places and that includes holding onto the power to decide whether or not to hire a marijuana user.

### **Support-Opposition: (As of 04/03/2018)**

#### Support:

Service Employees International Union (SEIU)  
United Food and Commercial Workers (UFCW)  
California NORML

#### Opposition:

The California Chamber of Commerce

**Staff Recommendation:**

League staff recommends an oppose position on AB 2069.

**Committee Recommendation:****Board Action:****11. AB 2571 (Gonzalez Fletcher) Public Employee Retirement Systems:  
Investments: race and gender pay equity. ([Full Bill Text Here](#))****Bill Summary:**

This bill would require hospitality industry assets to report pay differential data on their employees if they are owned in any part by The California Public Retirement System (CalPERS) or any public retirement system. The bill would also require a public investment fund to disclose pay equity reporting information at least once annually to the State Auditor and in a report presented at a meeting open to the public.

**Bill Description:**

An act to add Section 7513.76 to the Government Code, relating to retirement. It is the author's intent to leverage the financial weight of public pension investment funds to encourage private equity firms and hospitality employers to adopt and comply with pay equity transparency policies that result in the reporting of pay differentials by race and gender.

**Background:**

According to the author's office, "Currently, roughly 8 percent of both CalPERS and CalSTRS portfolio holdings are in private equity, which amounts to roughly \$48 billion between both systems." They go on to say, "Approximately a third of full service hotels in the United States are owned by private equity and real estate managers."  
(See Staff Comments)

**Fiscal Impact:**

The CalPERS system may take a financial loss because of this bill and because of that employees and employers will be negatively affected. CalPERS has publically stated that divestments have cost the fund approximately eight to ten billion dollars in earnings.

**Existing League Policy:**

*Divestment in industries that may run contrary to environmental or other broad policy goals as an investment strategy can present challenging conflicts for CalPERS in balancing current affairs against its fiduciary duty to maximize retirement investments. The League supports CalPERS' priority to its members as stated in the State*

*Constitution Article 16, Section 17, "[a] retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."*

*The League supports responsible investment strategies that balance the short and long term ability of CalPERS to meet its financial commitments to its members.*

*Any divestment policy must be well vetted and must include the opportunity to identify alternative revenue sources consistent with the intended impact of the divestment and CalPERS' fiduciary responsibilities outlined above.*

**Comments:**

Staff Comments:

The League views any piece of legislation, including AB 2571, that will lead to potential divestment from the CalPERS fund to be harmful for cities. Divestment limits CalPERS' ability to fulfil their fiduciary responsibility to deliver the best returns possible. The fact is that divestments cost CalPERS money and this hurts retirees and employers. According to CalPERS, divestments have cost the fund approximately \$8 to \$10 billion dollars in lost earnings. With cities already facing financial pressure, additional divestment will put cities under increased fiscal pressure and reduce their ability to provide vital services.

However, when the Committee recommended the policies regarding divestment it was requested that divestment measures be brought back on a case-by-case bases for discussion and approval.

**Support-Opposition: (As of 04/03/2018)**

Support:

UNITE HERE Local 11 (Sponsor)

Opposition:

None on file, however, both the California Association of Counties (CSAC) and the California Special Districts Association (CSDA) are recommending an oppose position to their respective policy committees.

**Staff Recommendation:**

League staff recommends an oppose position on AB 2571.

**Committee Recommendation:**

**Board Action:**